When Do Values Translate into Policy and When Does Policy Dilute Values? A Case Study of Private Fair Trade Regulation vs. Public Organic Regulation

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When Do Values Translate into Policy and When Does Policy Dilute Values?

A Case Study of Private Fair Trade Regulation vs. Public Organic Regulation

Cody Jaffe
3/7/2013
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Glossary

AMS – Agricultural Marketing Service; part of the USDA that provides price and quantity data for agricultural commodities

ATOs – alternative trade organizations

CAFOs – Concentrated Animal Feeding Operations; a commonality of conventional animal product production in which animals are tightly confined in a large industrial facility

Corporate actors/Industry actors – used interchangeably to describe large firms that are partnered with Fair Trade/Organic

Equal Exchange – the first activist Fair Trade coffee roaster

fair trade – refers to the general fair trade movement designed to pay farmers better prices for commodities

Fair Trade – refers to Fair Trade USA (or Transfair USA prior to 2011 when noted)
Fair-washing – using the FT label to “burnish their corporate images and mislead consumers about their overall business practices, without meaningfully altering those practices” (Jaffee 2012, p. 107).

FLO – refers to Fairtrade International (Previously Fair Labeling Organizations International)

FT – acronym used to refer to Fair Trade USA

Just Coffee – an activist coffee company that purchases coffee directly from fair trade cooperatives

Max Havelaar – one of the first activist groups that started fair trade

National List – short for National List of Allowed and Prohibited Substances; a list of synthetic and nonorganic materials allowed and prohibited in organic production

NOP – National Organic Program; administers Organic within the United States Department of Agriculture

NOSB – National Organic Standards Board; recommends standards to the NOP for USDA Organic

Organic – refers to USDA Organic

organic – refers to the general organic movement to produce agriculture without the use of synthetic materials

Organic Consumer’s Association – an activist consumer group dedicated to preserving the integrity of USDA Organic

USDA – United States Department of Agriculture
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Abstract

Fair Trade and Organic initiatives both represent new forms of social and ethical regulation that attempt to charge a higher price for a more ethically or environmentally beneficial product. Started by activist movements, each initiative has seen increased brand visibility and product awareness as their products fill new consumer niches for ethical or environmentally-beneficial products. As a result of each initiatives success in expensive niche markets, corporate and industry actors have partnered with these initiatives to manufacture ethical products. However, partnership with corporate and industry actors runs the risk of diluting the initiatives to little more than conventional production, as corporate actors share fundamentally different values and priorities than the activists who created each movement. As a result, both Fair Trade and Organic have faced pressure from corporate actors to dilute their initiatives to little more than conventional production. Since Fair Trade is privately regulated and Organic is publicly regulated, it appears that the nature of private and public regulatory bodies could cause them to respond to pressures from corporate actors differently. Using the theoretical concepts of Regulatory Capture and the Life Cycle Theory of Regulatory Commissions, I will present controversial standards within each initiative and determine that Fair Trade has been captured while Organic has been able to effectively represent the interests of its diverse stakeholders. I will conclude with a policy recommendation for Fair Trade to become a more legitimate regulatory body and more effectively represent the values of both activists and corporate actors.

I. Introduction

Two of the most well-known alternative agrifood initiatives, Fair Trade\(^1\) and Organic\(^2\), represent attempts to subvert ecologically and socially destructive forms of agriculture and production through

\(^1\) In this paper, Fair Trade only refers to Fair Trade USA [www.fairtradeusa.org](http://www.fairtradeusa.org) unless stated otherwise.
new forms of regulation. While they have different missions and goals, both initiatives represent similar attempts to create products produced in an environmentally or socially beneficial manner by using innovative forms of regulation (i.e. certification labels). Both programs have seen massive expansions in brand visibility and awareness as their labels appear on an increasing number of different products. However, as both these initiatives were created by progressive activist groups, any partnership with a corporate or industry actor utilizing conventional methods of production runs the risk of eroding the goals and scope of the initiative, watering it down to nothing more than a seal on conventional production. As Fair Trade is privately regulated while Organic is publicly regulated, there may be differences in how each initiative responds to the pressures of corporate actors and how they have developed in partnership with corporations.

Both Fair Trade and Organic have faced pressure from corporate and industry actors to water down the initiatives to little more than conventional production methods. If these initiatives become captured by corporate actors, they will be tailored to the interests of corporations and thus reduce the amount of benefits attributed to poor farmers (i.e. Fair Trade) and allow large farms to produce organic products with minimal differences from conventional production (i.e. Organic). While both these initiatives are regulated within the U.S., Fair Trade’s regulations affect the welfare of small farmers across the globe and USDA Organic’s regulations serve as a model for organic programs within other countries.

While previous research has attempted to determine how corporations have diluted the standards of each initiative, only one study (Jaffee & Howard 2010) has attempted to compare the similar and different effects corporate partnerships have had on the development of the initiatives. As I will discuss later, this study is incomplete and lacks substantial reasoning behind its argument.

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2 In this paper, Organic only refers to USDA Organic [http://www.ams.usda.gov/AMSv1.0/nop](http://www.ams.usda.gov/AMSv1.0/nop) unless stated otherwise.
Therefore, I intend expand on this discussion by studying how corporations have diluted each initiative and whether the nature of the public and private regulatory bodies makes them more or less inclined to be affected by pressures from corporate actors. For each initiative, I will present the standards that are most controversial\(^3\), discuss why they are included, and determine if the standards are more beneficial to activists or corporations. Finally, I will argue the nature of private regulatory bodies makes them more likely to be captured than public regulatory bodies. This essay thus is not intended as a critique of Fair Trade or Organic; it intends to study whether or not they have been captured by corporate actors.

While Fair Trade and Organic have evolved from similar positions and faced similar pressures from industry actors, they have been very different in how their respective regulatory boards have handled the pressures from industry actors. After the passage of the Organic Foods and Production Act in 1990, Organic became publicly regulated through the National Organic Program (NOP), part of the United States Department of Agriculture (USDA). Within the NOP, the rules and regulations are drafted by the National Organic Standards Board (NOSB), a group that legally has to represent diverse groups of stakeholders. The NOSB is composed of four farmers/growers, three environmentalists/resource conservationists, three consumer/public interest advocates, two handlers/processors, one retailer, one scientist (toxicology, ecology, or biochemistry) and one USDA accredited certifying agent (Current NOSB Members, NOP). The recommendations drafted by the NOSB are then sent to the USDA which publishes the final rules and standards in a formal register.

Fair Trade is regulated by Fair Trade USA in the United States and Fairtrade International (FLO) internationally. After evolving from a diverse group of activists, NGOs, and alternative trade organizations (ATOs), Fair Trade USA now represents the most mainstream and well-known Fair Trade label in the United States. On the Fair Trade USA Board of Directors is a less diverse group of thirteen

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\(^3\) Within Fair Trade, I will only include standards that are present within the Coffee initiative as I am assuming that Fair Trade’s practices regarding Coffee are representative of the initiative as a whole.
people, including three representatives of coffee cooperatives and unions, and four representatives from the corporate sector (Who We Are, Fair Trade USA). Fair Trade standards are created through an eight-step process that includes Fair Trade USA, key stakeholders, stakeholders, scientific certification systems and the broader public as participants (Standard Setting, Fair Trade USA).

Several academic theories about regulatory commissions have hypothesized about how corporations (the regulated segment of industry) have affected the role of the regulators. The Life Cycle Theory of Regulatory Commissions developed by Merver Bernstein was the first theory to describe how regulatory bodies become tools for the benefit of the regulated. Bernstein’s theory on the Life Cycle of Regulatory Commissions argues that federal commissions all go through a similar evolutionary process that starts with their creation and ends with their decline, a situation in which they become passive in regulatory duties or relate to the interests they should be regulating (Bernstein, p. 92). He states that regulatory commissions typically go through four periods of their life cycle: “gestation, youth, maturity and old age” (Bernstein, p. 74). The general progression of a regulatory commission starts with agitation and organization around a problem, leads to formation of the regulatory body, and ends with the regulatory body having little to no ability to influence or regulate the regulated groups.

If the Life Cycle of Regulatory Commissions theory were to apply to Fair Trade or Organic, a similar evolutionary process would be evident. Each initiative would have formed around significant public agitation about conventional agricultural production or low commodity prices. After regulatory bodies were formed, they would be aggressive in their attempts to regulate, but would be limited by a lack of power and organizational support. Eventually, they would simply regulate disputes within industry and become a tool of industry, rather than an independent body with effective regulatory power.

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4 This article is also the first of several theoretical arguments developed about Regulatory Capture.
Kenneth J. Meier expanded Bernstein’s Life Cycle Theory of Regulatory Commissions into his own theory of Regulatory Capture. Meier argues that interest groups eventually come to capture (or dominate) the process of regulation through their influence on the regulatory agency. He argues that interest groups made of industry and corporate actors are the: “only political force in the [regulatory] agency’s environment with any stability” (Meier, p. 18). Because of their organizational strength and the limited power of the regulatory agency, interest groups pressure “the agency to accommodate its needs” (Meier, p. 19). Finally, when the regulatory commission is unable to fight the more powerful interest groups, “The agency [is] captured and henceforth [tries] to regulate in the interests of the industry [and thus] policy should be responsive to the industry” (Meier, p. 19).

If the theory of Regulatory Capture were to apply to Fair Trade or Organic, a similar situation would be evident. Each initiative’s regulatory body would have relatively little power, especially compared to groups of corporate and industry actors. As a result, each regulatory body would be limited in its ability to regulate and eventually would come to be influenced by corporate actors to accommodate their needs. Finally, each regulatory body would be rendered unable to fight the interest groups of corporate and industry actors, and would regulate in the interest of corporations rather than in the public interest.

Using my analysis of the controversial standards included within Fair Trade and Organic, I will conclude that Organic’s public regulatory body (the NOSB) has more actively protected the interests of diverse groups of stakeholders (activists and corporations), while Fair Trade has only protected the interests of corporate actors. While Fair Trade can still provide positive benefits to small farmers, the capture of the initiative by corporate actors reduces the amount of benefits that small producers receive. I will then analyze each initiative within the theoretical frameworks of Regulatory Capture and the Life Cycle Theory of Regulatory Commissions to determine if theory can further explain the nature of
these regulatory bodies. Since my analysis proves that Fair Trade has been captured by corporate actors, I will suggest that Fair Trade become publicly regulated (i.e. Organic) to more effectively represent the interests of activists and corporations.

In the second section I will provide background on Fair Trade and Organic, including history of their development and how they evolved to become what they are today. I will discuss how Fair Trade has affected farmers to show how the benefits from Fair Trade have waned over time as corporate influence has increased. I will also discuss the increasing legitimacy of the Organic label through the development of the Organic Equivalence Arrangement. In the third section I will present evidence of controversial Fair Trade standards, their implications for the movement, and an analysis of whether the standard in question benefits activists or corporations. In the fourth section I will present evidence of controversial Organic standards, their implications for the movement, and an analysis of whether the standards benefit activists or corporations. I will conclude that Organic has more effectively represented the values of activists and corporate actors because of the transparency of issues within the initiative and the diverse composition of the NOSB. In the fifth section I will conclude that Organic has not been as captured as Fair Trade and will recommend that Fair Trade become publicly regulated in order to more effectively represent the interests of diverse stakeholders.

II. The Development and Evolution of Fair Trade and Organic

a. Introduction

To provide background on the Fair Trade and Organic alternative initiatives, this paper will examine the development of each initiative and any controversies or issues regarding their development. I will first discuss issues relative to Fair Trade including background on the coffee industry, motives for the movement’s development, the development of the movement, the impact on
producers, and the challenges of mainstreaming and corporate partnerships. I will then discuss issues relative to USDA Organic including the movement’s development, the development of standards, and controversy relating to the standards.

Although Organic and Fair Trade certify different products, they both primarily certify agricultural goods; Fair Trade certifies beans and grains, cocoa, coffee, flowers, fresh fruit, honey, spices and herbs, sports balls, sugar, tea, wine and apparel (Fair Trade USA) while USDA Organic certifies mainly food and agricultural products (National Organic Program). However, the Fair Trade label is primarily known for appearing on coffee. As such, much of the research on Fair Trade focuses specifically on coffee and for the purposes of this paper my analysis will only be concerning controversial standards within the coffee initiative. In the following sections in which I discuss the development and effects of Fair Trade, I thus primarily analyze research regarding Fair Trade coffee. Although most Fair Trade products are not produced exactly like coffee, I assume that the development of Fair Trade based on the plight of struggling coffee farmers and it’s mission and practices relative to coffee represent the organization as a whole.

b. Overview of Coffee and Fair Trade

As the second most valuable commodity traded today (after oil), coffee production and consumption links developing countries where it is produced with developed countries where it is consumed (Haight 2011, p. 76). However, as popular and expensive as coffee has become in developed countries, coffee farmers still face fluctuating international coffee prices that usually confine them to a life of meager means and poverty. Valkila labels this as the existence of: “a coffee paradox; the global coffee business is creating wealth in the consuming countries, while peasant coffee farmers and laborers remain in poverty” (Valkila 2010, p. 259).
As a response to these problems, Fair Trade\(^5\) and other non-governmental organizations created labeling and organizational systems designed to pay coffee farmers better prices for their coffee. FT essentially creates a new market for ‘socially just’ coffee by selling coffee with a social justice label at a premium. Through my research of Fair Trade and Fair Trade coffee, I have read and organized the existing literature into different issues affecting Fair Trade and other organizations including the history of coffee as a commodity, the typical coffee farm, the origins of fair trade and alternative trade organizations, the impact of Fair Trade on coffee farmers and laborers, the mainstreaming of Fair Trade and the effect of corporate partnerships on Fair Trade.

c. Historical Context

As one of the most traded commodities, Ponte states that the first attempt to regulate the trade of coffee in 1902 by Brazil (a dominant producer at the time) was an attempt to hoard some of their supply, thus increasing the overall world price of coffee and increasing profits (Ponte 2001, p. 4411). As coffee became more important within the world market, the majority of coffee producing and consuming countries signed the International Coffee Agreement (ICA) in 1962 to regulate the world trade of coffee (Ponte 2001, p. 4411-12). The ICA worked by assigning quotas to each production country. If the world price of coffee fell below a certain level, quotas were tightened and supply was limited, but if the world price rose above the set level, the quotas would be loosened and producers could sell more. Ponte argues that because the supply and demand for coffee are almost inelastic, coffee prices can vary drastically meaning that: “a situation of supply shortage results in high coffee prices without a significant reduction in consumption [and vice versa]” (Ponte 2001, p. 4411). However,

\(^5\) The definition of Fair Trade used for this paper is: “an alternative approach to conventional trade that aims to improve their livelihoods and well-being of small producers by improving their market access, strengthening their organizations, paying them a fair price with a fixed minimum, and providing continuity in trading relationships” (Daviron & Ponte, p. 173).
Rice argues that because quotas were set based on prior production levels, producers were encouraged to increase production at the expense of quality (Rice 1999, p. 563).

While riddled with problems, the ICA generally kept the price of coffee relatively high and stable. After the collapse of the ICA in 1989, the prices of coffee decreased and became less stable, resulting in lower profits for producers and higher profits for sellers within consuming countries: “between 1989-90 and 1994-95, the proportion of total income gained by producers dropped to 13 percent (from 20 percent in the 1970s); the proportion retained in consuming countries surged to 78 percent (from 53 percent in the 1970s)” (Ponte 2001, p. 4413). Thus not only did farmers earn lower prices and shares of total revenue following the collapse of the ICA, they also faced fluctuating prices that often were higher than their costs of production.

d. The Typical Coffee Farm

One of Fair Trade’s initiatives is for farmers to grow coffee more sustainably like a traditional coffee farm, rather than modern or ‘technified’ farms which are streamlined to increase production. Rice states that coffee is typically grown, “[...] in the mid- and high-elevation mountainous zones of tropical America”, further adding that coffee lands in Latin America cover 3.1 million hectares, making the region a large share of the coffee producing market (Rice 1999, p. 558). He argues that the typical coffee farm has been radically changed by modernization and the forces of neoliberalism in the push to standardize and increase production. Behind pushes by USAID, Latin American farmers saw technification as a path towards more profits and success. He states that a traditional coffee farm is a shaded environment with species diversity that requires little inputs or labor to maintain. In contrast, a modern or ‘technified’ farm often has the coffee plants directly exposed to the sun and planted in organized rows. A technified farm also requires the use of chemical fertilizers, as the unshaded farms
lose the benefits of the nutrients deposited in the soil by plants in shaded, lush farms. Technified farms thus require more labor to maintain the crops and spray the fertilizers (Rice 1999, p. 568).

e. Origins of Fair Trade Movement

Part of the alternative trade movement, fair trade originated in the 1960s in Europe. Fair trade seeks to provide alternative solutions to imbalances within the global trade system and is, “an alternative approach to conventional trade that aims to improve their livelihoods and well-being of small producers by improving their market access, strengthening their organizations, paying them a fair price with a fixed minimum, and providing continuity in trading relationships” (Daviron & Ponte, p. 173). It originally was targeted at helping small farmers in developing countries because: “farmers are often prey to ‘cut and thrust’ and predatory merchants, urban-based companies or their agents who show only contempt for rural life and ‘uneducated’ rural people” and because rural farmers were not targeted through structural adjustment programs reforms because they were not seen as profitable players in the market (Tiffen 2002, p. 386). Therefore, not only were rural farmers subject to exploitation through powerful intermediaries but they were also marginalized through the expansion of neoliberal policies that did nothing but leave them powerless within the world market. Fair trade was thus a response to an imbalanced market structure that concentrated power among large commodity purchasers while isolating and marginalizing poor farmers. It was created to fulfill the: “need for new international business models that connect smallholders and very poor farmers more appropriately into global markets” (Tiffen 2002, p. 391).

After the creation of the first fair trade labeling organization in the Netherlands named Max Havelaar, this and other similar fair trade labeling organizations merged into Fairtrade Labelling Organizations International (FLO). FLO is an international certification body for labeling fair trade coffee,
with Transfair USA\textsuperscript{6} being the certification arm for the United States (which later became Fair Trade USA) (Haight 2011, p. 76). Fair Trade originally only certified democratically operated cooperatives organized of small coffee producers (with less than three hectares of land) (Valkila 2010, p. 264) that agree to follow certain organizational and ethical procedures (sustainable growing techniques), constituting about 1 percent of overall coffee production in 2006 (Sick 2008, p. 198). Figure 1 shows a Fair Trade and conventional marketing chain for coffee from Nicaragua to Sweden to show the difference between the Fair Trade and conventional supply chains. Fair Trade subsequently expanded its certification to include many other agricultural and craft products, although it still mainly certifies agricultural products.

\footnote{As I will discuss later, Transfair USA left FLO in 2011 and became Fair Trade USA.}
Figure 1: Marketing Chain of Coffee from Nicaragua to Sweden

The thick arrow represents the predominant trade route. The dashed arrows indicate how the fair trade movement operated initially, when specialized roasting companies sourced coffee directly from small producer organizations (The Coffee Value Chain, Valkila 2010).
f. Effect of Fair Trade on Coffee Producers

Fair Trade is designed to help small farmers receive better, more stable prices for commodities. Fair Trade sets a price for coffee and adds a price premium on top of the price to be used for community development projects. If the world price rises above the fixed Fair Trade price, the farmer is paid the world price as well as the price premium, implying that farmers under Fair Trade labels receive higher wages. In other words, if the world price of coffee was $1/lb and the Fair Trade set price was $1.26/lb farmers would be receiving a high price for Fair Trade coffee but if the world price rose to $1.30/lb (over the set FT price), Fair Trade would add a premium to the world price (e.g. $0.10/lb) and thus pay for example $1.40/lb. Valkila states that: “during 2000-2004, when the international coffee prices were low ['the coffee crisis'; prices were extremely low compared to previous years], the Fair Trade minimum price increased prices substantially for those cooperatives that were able to sell to Fair Trade markets [because it was much higher than the world price], but during 2005-2008, the Fair Trade minimum price has been within the volatility of market prices, and thus has had less significance for producer organizations [the FT price has been within the range of the world prices]” (Valkila 2010, p. 262). He further states that from 2004-2006, the price received by FT farmers after cost deductions within a cooperative was about $0.88/lb and the average price received by conventional coffee farmers at the time was $0.83/lb (Valkila 2010, p. 263). Thus, the Fair Trade price was only significantly higher than the world price during periods of low coffee prices (or equivalently when there was an oversupply of coffee on the world market). Also, while the average price paid to FT farmers was higher and more stable, the variability of the conventional price meant that it was higher than the FT set price at times (although the addition of the price premium to the world price would become the new FT price).

Still, Geiger-Oneto states that: “a significantly larger percentage of TF (Transfair, a fair trade label) farmers reported an increase in their income [and] also scored higher on the composite quality of life index than non-TF farmers” (Geiger-Oneto 2011, p. 284). Thus not only did the farmers in this study
report higher incomes after the introduction of Fair Trade, but they also reported a higher subjective quality of life. Sick also argues that the greatest benefit farmers received from FT was not the higher price but: “the organizational skills and other forms of human and social capital” received through membership of the cooperative (Sick 2008, p. 198). Thus, while the prices received by FT producers may be marginally better, the true benefits of the system may lie in membership of a cooperative rather than just FT labeling.

g. Mainstreaming of Fair Trade

More recently, researchers have analyzed Fair Trade’s mainstreaming of many products, the impact mainstreaming has had on the label and certification program and the potential challenges that mainstreaming creates for Fair Trade. Through the example of the Day Chocolate Company, Doherty argues that Fair Trade can mainstream and increase brand visibility without significantly compromising the benefits accrued to small producers. Doherty studies what he labels as “radical mainstreaming”, which he defines as: “[mainstreaming] projects that maintain the transformative message of FT” - of the Day Chocolate Company (now the Divine Chocolate Company) in the United Kingdom (Doherty 2007, p. 701).

He explains that cocoa (and thus chocolate) became a certifiable Fair Trade product for similar reasons as coffee due to the industry and market structure: “Just a few large companies [...] account for 75 per cent of the chocolate market [and] there are diminishing numbers of processing facilities and relatively few end-users in the market” (Tiffen 2002, p. 389). As with the coffee market, the chocolate market has many small farmers providing supply, but only a few large companies providing demand, creating a situation in which the farmers are powerless to the whims of the market.

The Day Chocolate Company was developed as an “100 per cent FT business” with the mission of “providing more equitable market access for Ghanaian cocoa growers and [...] equity ownership [...]

for its supplier Kuapa Kokoo Farmers Cooperative” (Doherty 2007, p. 694). The company wanted to mainstream its Fair Trade products because it believed that it would not be possible to create a legitimate business without being able to “compete in the mainstream” and they believed that mainstreaming could increase sales and create greater awareness about Fair Trade products (Doherty 2007, p. 702). Still, they recognized the potential difficulty of translating the message of Fair Trade to the average mainstream consumer. As such, the company intended to create a recognizable brand that was also easily available to consumers like other mainstream chocolate manufacturers. However, Day Chocolate was aware of the possible challenges of mainstreaming their Fair Trade product and competing in the mainstream market because: “Mainstream chocolate company practices do not come close to such standards and guidelines for trading partnerships that benefit smallholders” (Tiffen 2002, p. 391). Thus, they created a clear mission for mainstreaming to address these challenges: “Our mission [...] is to be highly visible in debates about fair trade, to act as a bridge between consumers and primary producers, and to act as passionate advocates for a trading system that brings dignity and respect to all its participants” (Doherty 2007, p. 701). Therefore, not only did Day Chocolate commit to fully embracing the Fair Trade mission within the mainstream market, it also committed to help spread awareness and knowledge about the Fair Trade label and program.

Doherty then argues that Day Chocolate is an example of ‘radical mainstreaming’ in that it has been able to mainstream while maintaining its original model and mission of a ‘100 per cent FT’ company: “Day has not limited itself to the price and quality message which Lowe and Davenport (2005b) argue is a danger of being in the mainstream” (Doherty 2007, p. 702). Day Chocolate has also been successful in increasing its sales and availability; from 2004-2006 Day Chocolate’s sales increased by at least 30 percent every year (Doherty 2007, p. 706).
Doherty’s example of Day Chocolate clearly shows that it is possible for Fair Trade to enter the mainstream without diluting or reducing the values allocated to small producers. Doherty elaborates that the fact that Day Chocolate has been able to mainstream its product while still maintaining the original model and mission of Fair Trade is important because: “FT is not just about the price premium but primarily about changing the relationship between producers and consumers” (Doherty 2007, p. 701). He believes that this is very important because often mainstreaming Fair Trade products leads to “‘clean-washing’ (or equivalently “fair-washing”), which occurs when a company ‘derives positive benefits from its association with the fair-trade movement, however minimal its efforts to ‘live’ the values” (Doherty 2007, p. 694). However, the Day Chocolate company is not an example of ‘clean-washing’ in that it shows that the: “alternative business model that challenges the conventional international trading system can work” and that: “it is possible to mainstream and be radical [maintain the original message]” (Doherty 2007, p. 707-8). Thus it is clearly possible for Fair Trade and its partners to mainstream their products without significantly reducing the benefits originally intended from Fair Trade.

h. Corporate Partnerships and Fair Trade

Recently, much of the literature about Fair Trade has discussed it’s corporate partnerships and the effect the partnerships have had on the movement. As stated before, the success and growth of the Organic and Fair Trade initiatives have made them attractive to corporate actors who also saw them as gateways into niche markets. However, many individuals fear that corporate partnerships within these initiatives could result in a dilution of the values of the initiative as corporate actors sought to weaken the regulations of the initiative. Thus much of the recent research about Fair Trade is concerned with the question: Have corporate partnerships weakened the movement?
Fair Trade’s first corporate partnership was with Starbucks Coffee and began in April 2000, after pressure from activists demanding for the company to buy Fair Trade coffee because of charges of labor violations in some of its plantation suppliers in Central America (Jaffee 2012, p. 95). Although Starbucks agreed to sell Fair Trade coffee in all of its stores, initially less than 1% of its supply was FT coffee (Jaffee 2012, p. 95).

After the initial partnership with Starbucks, other corporations partnered with Fair Trade including Procter & Gamble and Sara Lee (Jaffee 2010, p. 274). These corporations also bought low levels of Fair Trade coffee: “usually less than 1% of their total volume” (Jaffee 2010, p. 274). Corporate partnerships thus increase sales and visibility of Fair Trade products but run the risk of being used more for corporate gain than to promote the movement (shown through low purchase levels).

Jaffee further describes how the entrance of these corporate actors has led to conflicts between the original activist movement and the new corporate partners. He labels what he sees as the five key areas of debate between the activists and the corporations as: “(1) the distinction between ‘movement-oriented’ [activists] and ‘market-oriented’ [corporations] fair trade retailers; (2) the relationship of Transfair USA to these two groups of licensees, including the question of minimum entry requirements for licensing; (3) the level of fair trade minimum prices; (4) the increasing certification of plantation agriculture; and (5) issues of fairness along the supply chain, as well as how best to manage market growth” (Jaffee 2010, p. 273). These areas of controversy are still actively debated within the movement.

Also controversial has been Transfair USA’s decision to leave FLO: “in order to permit unlimited certification of plantation-produced coffee and other crops” (Jaffee 2012, p. 109). This was the result of a debate within FLO over which plantation-products could be certified that resulted in FLO allowing plantation certification for all of their products except: “cocoa, coffee, honey and cotton [which] remain
for the moment limited to smallholder production” (Jaffee 2012, p. 109). Although Jaffee does not analyze why these four products remained smallholder-production while the others did not, it is likely that the original mission of Fair Trade to help rural, marginalized, small landowners and not plantation laborers was essential to the preservation of plantation-free product certification for these four products.

Jaffee uses the conceptual frameworks of cooptation, regulatory capture, and dilution (defined later) as well as other evidence to determine whether corporate actors have tried to manipulate the movement to their advantage. He first concludes that mainstreaming Fair Trade through corporate partnerships has created massive growth of the U.S. market, making it the largest Fair Trade market in the world, creating positive implications for the brand’s increasing visibility (Jaffee 2010, p. 272). However, he then concludes that: “The phenomenon of cooptation – manifested as both standards dilution and regulatory capture – has clearly taken place and continues to occur in the context of the U.S. fair trade system” (Jaffee 2010, p. 281). Indeed, he states that while many activists still try to work within the Fair Trade system, many of the 100% Fair Trade companies have left the label as a response to the controversies (Jaffee 2010, p. 279). However, he believes that if the certification body were to hold its licensees accountable to regulations that are consistent with the founding values, Fair Trade could become more legitimate. However, this optimism seems to be discredited earlier in his analysis when he notes: “Licensing fees accounted for 67.4% of Transfair USA’s revenue in 2007 [...] the fees paid by Starbucks alone in 2008 [...] account for approximately 17% of the certifier’s operating budget” (Jaffee 2010, p. 275). Thus, not only is Transfair USA nearly dependent on licensing fees for its revenue, the large corporate actors are such a large portion of the licensing revenue that the organization is unlikely to change its standards in a way that would alienate its corporate partners. Clearly there are many questionable aspects of the Fair Trade and corporate partnerships, implying the need for a more thorough analysis to determine the evolution and residual effects of the partnerships.
i. Organic Background

Similar to the Fair Trade movement, the Organic movement surfaced in the 1970s through several different groups of activists who were critical of conventional agriculture and wanted to know how their food was grown and produced (Jaffee & Howard 2010, p. 390). These activists, while having different opinions about the way food should be processed, all were unanimous in their rejection of the conventional agriculture system which they viewed as an: “impersonal, chemically dependent, agro-industrial complex” (Jaffee & Howard 2010, p. 390). These different groups came to use the term organic to label products that were produced under more stringent environmental regulations, and many different groups created their own certification programs for their respective labels. As different organic labels propagated and the organic movement increased its visibility, consumers and government officials became concerned that the multitude of organic labels could lead to fake organic products or an inconsistency across labeling programs. In response, the federal government passed the Organic Foods Production Act of 1990 (OFPA) to create a single national organic standard regulated by the United States Department of Agriculture (USDA), “that would eliminate the slippage in quality and credibility inherent in multiple sets of standards” (DeLind 2000, p. 199). However, the passage of the OFPA was supported by special interests that wanted to lower the costs of using multiple standards and thus may have been business motivated, rather than ethically motivated, from its initiation.

j. Organic Standards Development & Controversy

After the passage of OFPA, the National Organic Standards Board became responsible for creating the set of standards and regulations that would delineate a product as organic. After four years of deliberations beginning in 1992, the NOSB submitted its final proposal to the United States Department of Agriculture. The first incident of pressure by corporate actors to influence the Organic movement became evident as the USDA published its proposed organic rule in 1997. The 1997 proposal
disregarded many of the suggestions proposed by the NOSB and included three very controversial additions to the NOSB’s proposal: “The acceptance of food irradiation for controlling spoilage and bacterial contamination, sewage sludge as a soil amendment, and genetically modified organisms (GMOs) constituted three of the most glaring departures” (DeLind 2000, p. 199). In response to this glaring defiance of the NOSB’s recommendations, over 275,000 people sent comments to the USDA, urging the removal of the three previously mentioned amendments (DeLind 2000, p. 199). Many organic farmers were so incensed that they considered leaving the USDA created organic label to create their own independent label (DeLind 2000, p. 199). Others pessimistically accepted this as part of an inevitable organic standardization process in which, “these desirable food-system characteristics are threatened as the definition of organic farming and food is narrowed to a set of standards which deal with growing and processing methods exclusively, and are acceptable to the food industry” (DeLind 2000, p. 199).

After receiving the huge public response to its first proposed rule, the USDA finally published a final rule in 2002 that delineated what defined an organic product. The rule defined organic agriculture as, “implementing regulations ‘to respond to site-specific conditions by integrating cultural, biological, and mechanical practices that foster cycling of resources, promote ecological balance, and conserve biodiversity’” (Chen 2012, p. 218). However, the definitions put forth by the NOSB and the EU (as I discuss later) are much more extensive than the USDA’s. Still, the rule notably excluded the three previously mentioned additions to the proposed rule of 1997 (food irradiation, sewage sludge, GMOs) and was actually: “fairly strict with respect to prohibiting other unacceptable inputs” (Jaffee & Howard 2010, p. 390). However, the rule removed any references to “the higher ideals of organic found in some regional certification systems [and actually] creates a ‘ceiling’ by prohibiting organic certifiers from enforcing stricter standards than those required by the USDA” (Jaffee & Howard 2010, p. 390). Therefore, the decision appeared to protect the uniformity that the USDA wished to create with the
standard but it destroyed the wish of the original Organic movement activists to increase the stringency of the standard over time (similar to the intent of the initial Fair Trade activists).

As a result of the development of a national organic standard, “sales of organic foods in the U.S. increased dramatically, with an average 20% annual growth almost every year since 1990” (Jaffee & Howard 2010, p. 390). The organic label owes much of this growth to partnerships with corporations and agribusiness indicated, “by the fact that 14 of the 20 largest food processors in North America have either acquired organic brands or introduced organic versions of their existing brands” (Jaffee & Howard 2010, p. 391). Thus the organic label has seen tremendous growth in sales and visibility since its creation by the USDA.

k. The Organic Equivalence Arrangement

As stated before, the definition of organic as provided by the USDA is different than the organic definition provided by the European Union. This has been problematic in that some organic products from the U.S. cannot be sold as organic products in the EU and some products from the EU cannot be sold as organic in the US. However, the legitimacy created by the state-run USDA Organic label has led to the adoption of the Organic Equivalence Arrangement between the United States and European Union in 2012, in which: “the United States and European Union have each agreed to treat the other’s jurisdiction’s system of organic certification as equivalent to its own” (Chen 2012, p. 213).

Before the adoption of the agreement, the US and EU both expressed concerns about the other’s organic program. The EU did not allow any products produced with GMOs to be certified as organic and would not accept imports of apples or pears from the US that had been produced with the use of antibiotics (Chen 2012, p. 221). The US did not allow any “agricultural products derived from animals treated with antibiotics” and thus was initially wary of the EU organic label for this reason (Chen 2012, p. 221). Thus to reduce barriers to trade between the EU and the US agreed to the Organic
Equivalence Arrangement. Somewhat surprisingly, the agreement represents an effective compromise with each side agreeing to the inclusion of the other side’s demands in the arrangement, resulting: “to push both sides’ agricultural standards toward more rather than less stringency” (Chen 2012, p. 222). This is positive in multiple aspects in that it standardizes the definition of organic between the EU and US and creates more stringent regulations for organic, showing original activists that state-created regulations do not have to be watered down to the most minimal of regulations and can actually influence the development of other countries’ organic initiatives.

Chen is very positive in his analysis of this arrangement, stating that: “[the Organic Equivalence Arrangement] represents the triumph of aesthetics and environmental philosophy over the traditional drivers of agricultural policy and food law in the United States” (Chen 2012, p. 214). What he describes as the victory of philosophy over science is the respect given to the organic ideal of producing food without agrochemicals or GMOs (even though it is not scientifically proven to be better for health), and the inclusion of values which delineate holistic agricultural production over economic considerations of efficient production (Chen 2012, p. 223). Thus, the Organic Equivalence Arrangement represents a positive piece of legislation that suggests that alternative agrifood initiatives can become standardized without significantly departing from the original values and mission of the movements’ founders and that state-created initiatives have strong legitimacy in that they can influence the development of similar initiatives in different countries.

1. Organic vs. Fair Trade: Differences in Corporate Cooptation

In the article Corporate Cooptation of Organic and Fair Trade Standards by Daniel Jaffee and Philip Howard, they compare the development of Organic and Fair Trade to determine if one of the initiatives has been more coopted than the other, using concepts from sociological theory. As I will discuss in greater detail in the following section, cooptation as used in sociological theory describes:
“the efforts of states or government entities to neutralize the effectiveness of movements for social change” (Jaffee & Howard 2010, p. 389). They also use the concepts of regulatory capture and weakening standards which I also define in the follow sections.

They first outline what they determine are the main points of conflict in the development of each initiatives’ standards. Within the USDA Organic’s development of standards the initial points of conflict were over the inclusion of three additions to the NOSB proposal, “(1) irradiation, (2) sewage sludge and (3) genetically modified organisms” (Jaffee & Howard, p. 390). However, after the exclusion of these stipulations in the 2002 rule, the points of conflict within the organic standards have switched to: “(1) the definition of animal access to pasture; (2) the definition of allowable inputs; and (3) extension to other products, such as cosmetics, pet food and fish” (Jaffee & Howard 2010, p. 391). By contrast, the points of conflict over the development of Fair Trade standards are: “(1) the distinction between ‘movement-oriented’ and ‘market-oriented’ fair trade retailers; (2) the relationship of Transfair USA to these two groups of licensees, including the question of minimum entry requirements for licensing; (3) the level of fair trade minimum prices; (4) the increasing certification of plantation agriculture; and (5) issues of fairness along the supply chain, as well as how best to manage market growth” (Jaffee 2010, p. 273). Although the conflicts are different, they are similar in that they both represent debates between movement activists and industry players over what is feasible and what legitimizes the certification programs.

After an analysis in which the authors argue that both Fair Trade and Organic have been coopted by industry actors, the authors then conclude that “the organic sector is both subject to more industry influence, and its standards more compromised, than fair trade”7 (Jaffee & Howard 2010, p. 395). They then go on to state as explanation: “the major battles over organic standards arguably have

7 The opposite of the conclusion made in this paper.
already been fought and settled” (Jaffee & Howard 2010, p. 395). They therefore argue that the development of organic standards by the state gives them a “legal finality” that is not present within Fair Trade, and that limits the Organic label by already having decided the major controversies over the standards (Jaffee & Howard 2010, p. 395).

m. Analysis of Organic and Fair Trade Cooptation Article

The argument that Organic is more coopted than Fair Trade is very under supported and does not even address many relevant issues. As stated before, after the inclusion of three controversial additions to the proposed organic rule (irradiation, sewage sludge and GMOs), a large public outcry was able to effectively remove the three controversial additions from the document. While this fight may be settled and have the “legal finality” the authors suggest, the decision favored activists rather than industry, showing that “legal finality” may not imply any negative results (Jaffee & Howard 2010, p. 395). This and the recent Organic Equivalence Agreement between the US and EU (in which each initiative became more stringent in standards) suggest that the “legal finality” that the authors imply within the USDA Organic Label is not actually relevant; the standard can change to become more stringent (Jaffee & Howard 2010, p. 395).

The authors also suggest that corporations have more influence within Organic than Fair Trade. However, the NOSB legally has to represent groups of diverse stakeholders, meaning that any decision drafted by the NOSB represents a compromise between corporate actors and activists. This clearly reduces corporate actors influence in the movement by creating a balanced regulatory body (shown through NOSB documentation that consistently addresses diverse interests). In contrast, Fair Trade’s regulatory body does not have to represent diverse groups of stakeholders. As a result, its regulatory body is predominantly composed of corporate and business affiliates. In addition, Fair Trade USA is very

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8 The composition of the NOSB is discussed in the introduction.
dependent on the participation of corporate actors because: “almost seventy percent of Transfair USA’s\(^9\) revenue was from licensing fees, [...] the majority of those fees were paid by large corporate partners and [...] Transfair USA was thus unlikely to change its regulations in ways that would ‘alienate a large licensee’” (Jaffee 2010, p. 275). Jaffee additionally argued that this created a dependency on the partnership with corporate actors, admitting: “The phenomenon of cooptation – manifested as both standards dilution and regulatory capture – has clearly taken place and continues to occur in the context of the U.S. fair trade system” (Jaffee 2010, p. 281). However, the National Organic Program within the USDA does not have this dependency on revenue from its licensees, as it is funded by the government. Clearly, corporations have much more influence within Fair Trade rather than Organic, as the authors imply.

In addition, the authors ignore the difference in transparency between the two initiatives. The NOSB, the standards-making body for the NOP, is much more transparent than Transfair USA or the FLO, meaning that anyone from the general public can access documents about future meetings, developments within the organic label, and give input about the USDA organic standards. This is important because it makes information about the program and its development much more available to the public, shown by the 1997 public outcry against the proposed rule for organic. By contrast, Fair Trade USA and FLO are not very transparent. FLO does list its standards and recent changes to standards on its website, but does not allow public input in development of standards. Fair Trade USA does not list developments within its standards on its website and does not allow public input in development of standards. Therefore, Fair Trade standards are essentially created by their board of directors behind closed doors; their changes and additions listed in the form of press releases rather than forums for public opinion. Given the short explanation and lack of data to support their conclusion, the authors’ conclusion that organic is more subject to industry influence is clearly incomplete and under supported.

\(^9\) Now Fair Trade USA.
n. Bernstein’s Life Cycle Theory of Regulatory Commissions

As stated before, Merger Bernstein argues that regulatory commissions all go through similar evolutionary processes that starts with their formation and ends as they become passive regulatory bodies or regulatory tools used for the benefit of industry. The life cycle of a regulatory commission thus involves four periods: “gestation, youth, maturity and old age” (Bernstein, p. 74).

The gestation phase is the process of gathering support for regulation through “mounting distress over a problem” (Bernstein, p. 74). Organizational groups that want regulation garner more support when the distress is more prominent, and oppositional groups gather to “maintain the status quo” (Bernstein, p. 75). Eventually legislation is enacted, although it tends to be very limited and lacks clarity (Bernstein, p. 75). Advocates of regulation generally want short term rather than long term success in regulation, but regulatory reform is actually a long process that develops in the long term.

The youth phase involves the newly created regulatory body. When it is established, the regulatory body has very little power, organization or experience (Bernstein, p. 79). In contrast, the regulated groups are very organized and prepared to protect themselves from regulation (Bernstein, p. 79). Still, during this phase the regulatory body is often very vigorous in its approach to regulation because: “Merely passive enforcement of commission laws will not long command public respect and confidence and serve as a remedy for abuses” (Bernstein, p. 80-81). Typically, regulatory commissions are taken to court by the regulated interests to determine the power and scope of the regulatory bodies. In court, regulated interests are protected by established lawyers that attack the role of the regulatory commission and the commissioners themselves, causing the regulated body to lose public support. At this point, the regulatory commission realizes that effective regulation is often not feasible.

In the maturity phase, the controversy of the commission fades away as the commission becomes solely a tool to solve disputes within the regulated interests (Bernstein, p. 86). The commission
regulates according to the desires of industry and becomes more of a “manager of an industry” than a regulatory body (Bernstein, p. 87). The end of this phase is “marked by the commission’s surrender to the regulated” or when it becomes a tool of the regulated, rather than an effective regulatory commission (Bernstein, p. 90).

The old age phase is a gradual loss of power for the regulatory commission as it becomes a passive body or a tool for regulated groups. In this phase, the regulatory body’s function: “is the maintenance of the status quo in the regulated industry and its own position as recognized protector of the industry” (Bernstein, p. 92). Essentially, the regulatory body no longer serves as a regulatory tool for the public but rather becomes a tool to protect the interests of industry.

o. Regulatory Capture

Kenneth J. Meier further developed Bernstein’s Life Cycle Theory in his theory of Regulatory Capture. He first states that regulatory agencies are typically created in an environment in which industry actors or interest groups are the only stable forces (Meier, p. 18). These interest groups form coalitions in order to affect and direct regulatory policy (Meier, p. 19). Eventually, industry actors will be able to pressure the regulatory agency to “accommodate its needs” and effectively capture the regulatory agency (Meier, p. 19). He then elaborates that capture is expected in regulation because, “regulatory policy reflects the interests and the power of the concerned groups [...] policy should be responsive to industry” (Meier, p. 19). He notes that an industry’s (or interest group’s) ability to capture the agency designed to regulate it is determined by its size, resources, dispersion, cohesion, intensity of commitment, prestige, number of groups, and coalition breadth (Meier, p. 19-21).

However, Meier notes a flaw in the theory of Regulatory Capture. He states that “in numerous cases regulatory agencies regulate the industry vigorously even though only industry groups are well organized (e.g., airline safety, banking, pharmaceuticals)” (Meier, p. 19). He argues that because of
pressure from sources other than interest groups, regulatory policy is not always solely dictated by interest groups.

III. Methods

In order to compare how corporate and industry actors have affected the development of Fair Trade and Organic, I will compare the development of controversial standards within each initiative, assuming that any standard not controversial to activists or corporations benefits both parties. Within Fair Trade and Organic, corporate influence is shown both through the adoption of controversial standards and through the dilution of standards to lower bars of entry. As research states: “Such strategies of standards weakening or bar-lowering [...] set up an important contradiction: permitting the entry of low-road competitors [...] clearly threatens to reduce the potential rent or price premium to be gained from the niche” (Jaffee 2010, p. 271). Thus, not only do controversial and weakened standards threaten the integrity of the initiatives, they also permit the entry of conventional firms that threaten the price premium associated with these products. For this analysis, I will focus on the outcomes of the developments of the standards rather than the standards-making process, because the standards-making process of each initiative is much more convoluted than the actual outcomes of the standards. However, since my analysis only focuses on controversial standards within each initiative, it is possible that there could be additional evidence of capture that is not presented within this paper.

Since coffee is the most prominent Fair Trade product, I will focus my analysis on controversial standards within their coffee initiative. Jaffee 2010 states what he calls the controversial aspects of Fair Trade between activists and corporations: “(1) the distinction between ‘movement-oriented’ and ‘market-oriented’ fair trade retailers; (2) the relationship of Transfair USA to these two groups of licensees, including the question of minimum entry requirements for licensing; (3) the level of fair trade minimum prices; (4) the increasing certification of plantation agriculture; and (5) issues of fairness along
the supply chain” (Jaffee 2010, p. 273). Since several of the issues Jaffee mentions are not covered within Fair Trade standards (movement-oriented vs. market oriented retailers, and issues of fairness along the supply chain), I will only analyze controversial standards recommended or contained within Fair Trade standards (minimum entry requirements, fair trade minimum prices, plantation certifications). However, since Fair Trade is not very transparent, it does not release documentation relating to the development of its standards. Because of this, I will use evidence from Jaffee and other researchers to define and explain the controversial standards within Fair Trade.

Within USDA Organic, researchers have documented the major controversial standards between activists and corporations. DeLind notes that in the proposed final rule for Organic: “The acceptance of food irradiation for controlling spoilage and bacterial contamination, sewage sludge as a soil amendment, and genetically modified organisms (GMOs) constituted three of the most glaring departures” (DeLind 2000, p. 199). While these standards were removed from the Final Rule, I include them in my analysis because they represent the first attempt by corporate actors to weaken the Organic initiative. After these standards were removed from Organic, the fight between activist and corporations has moved to: “(1) the definition of animal access to pasture; (2) the definition of allowable inputs; and (3) extension to other products” (Jaffee & Howard 2010, p. 391). In addition to these controversies, the Organic Consumer’s Association has also fought against the attempted addition of nanotechnology to the Organic program (OCA’s Ongoing Campaign to Safeguard Organic Standards). Thus, for my analysis of controversial Organic standards, I will first discuss the addition and removal of irradiation, sewage sludge and GMOs. I will then discuss the more recent fights over animal access to pasture, allowable inputs, other certifiable products and the question of nanotechnology. Although all of the controversial standards are publicly documented by the NOSB, some of the standards I will discuss have been recommended to be changed or implemented, meaning that they are not yet formally a part of the NOP.
After I present the controversial standards within each initiative, I will determine whether activists or corporations benefitted more from the addition or removal of the controversial aspect. I will then analyze each initiative as a whole, to determine if it has been captured by industry or if the outcomes of the controversial standards represent a more balanced result for both parties.

IV. Fair Trade: Controversial Standards and Analysis

As stated before, Fair Trade was originally created by groups of activists, NGOs and alternative trade organizations (ATOs) to provide opportunities for small farmers marginalized by the international trade system to sell ethically produced products. As such, these activists had specific goals that they wished to see enacted in the Fair Trade standards.

Their principle value was to pay farmers a fair fixed price that was higher than the market price and would not fluctuate as much as world prices. As Jaffee 2010 states: “A ‘fair price’ was the *raison d’etre* for fair trade’s creation, and it is arguably upon the premise of a fairer price that the moral power of the system continues to rest” (Jaffee 2010, p. 276). In the late 1980s when ATOs began forming Fair Trade movements, they initially set a price, “based on assessments of producers’ costs and livelihood needs” (Jaffee 2010, p. 276). In addition to the fixed price, coffee producers were also paid a price premium that was intended to be democratically allocated to community development projects.

Another prominent value of FT activists was to only certify groups of small producers\(^\text{10}\) organized in democratic cooperatives that followed specific environmental and ethical producers (Sick 2008, p. 198). Fair Trade was designed to empower small farmers who were nearly powerless in the international trade system and thus it wished to extend its certification system only to farmers with small amounts of land. Estate and plantation products were not part of original Fair Trade movements.

\(^{10}\) In this case, small producers is defined as producers with “less than 3 hectares of land” (Valkila, p. 264).
because they had easier access to markets and were seen as representational of conventional production.

An additional value of FT activists was to ensure a minimum commitment to Fair Trade. Activists recommended that companies should be required to buy at least a certain percentage of their overall product as Fair Trade. The Equal Exchange coffee company, a Fair Trade activist group, was one of the main activists pushing for a minimum commitment to Fair Trade, noting that: “this would help ensure long term commitment and not just token participation” (Jaffee 2010, p. 274). In addition they: “also encouraged that the bar be raised steadily over time” (Jaffee 2010, p. 274). Both of these concerns reflect activists’ desires for companies to have legitimate commitments to Fair Trade, the logic being that without a minimum purchase requirement, corporations could purchase small amounts of Fair Trade coffee and promote themselves as buying ethically sourced coffee and running risk of “fair-washing” (Jaffee 2012, p. 107).

Corporate actors on the other hand, had different values and goals that they wished to achieve through Fair Trade. Corporate actors first wanted to be able to sell Fair Trade products at prices that would make them competitive within a supermarket setting. As I will state later, the minimum price for Fair Trade coffee has fallen dramatically in real terms since the first established price in 1988. Jaffee 2012 argues that: “These stagnating price levels reflected a political stalemate between the economic interests of the large commercial players in the certification system, and producer organizations” (Jaffee 2012, p. 108). Therefore, the decline in purchasing power of the Fair Trade price has not been a result of inflation; rather it has been the result of corporate pressure to keep the price low and competitive.

Corporate actors also wanted to be able to certify more products than just those produced in small producer cooperatives. Since some products were not typically produced in small producer cooperatives, it appeared that extending Fair Trade certification to plantations could provide laborers
with better wages and working conditions. However, researchers stated that: “the expansion of agrifood fair trade certification into waged labor [plantations] has not been driven by labor unions or other movement groups, but primarily by the demands of retailers” (Jaffee 2012, p. 108).

Corporate actors finally wanted to be able to purchase Fair Trade products without any minimum purchase level. In its first year of partnership with Fair Trade, Starbucks purchased less than 1 percent of its coffee from Fair Trade sellers (Jaffee 2012, p. 106). Another Fair Trade corporate partner, Nestle’s Fair Trade coffee purchases represented only .0025 percent of its overall coffee supply in 2008 (Jaffee 2012, p. 106). Though these companies promote their reputations as supporters of Fair Trade, they have shown only a minimal commitment to purchasing actual Fair Trade products.

Figure 2 shows the Fair Trade standards that have been controversial to either activists or corporations. Column 1 states the controversial aspect of the standard, column 2 states in which standard the controversial aspect is documented, column 3 states the basis for the standards inclusion, column 4 states complaints with the standard and columns 5 & 6 state whether the controversial standard was more beneficial to activists or corporations.
### Figure 2: Fair Trade USA Controversial Standards

<table>
<thead>
<tr>
<th>Controversial Aspect</th>
<th>Appears in Standard</th>
<th>Basis for Inclusion</th>
<th>Complaints</th>
<th>Beneficial for Activists</th>
<th>Beneficial for Corporations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Level of Fair Trade Minimum Prices</td>
<td>Set by Fair Trade USA and published in their database. They also accept pricing defined by FLO.</td>
<td>To empower small commodity farmers who face fluctuating, low commodity prices. A premium was included in addition to be used for community development projects.</td>
<td>Minimum prices have only risen minimally since 1989; many coffee farmers were losing money with stagnant prices and rising costs. Real Fair Trade coffee prices fell by 39% between 1988 and 2005 (Jaffee 2010, p. 276).</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Certification of Plantations</td>
<td>Farm Workers standards</td>
<td>To increase certification to products produced under plantation or similar conditions and to spread benefits of Fair Trade to farm workers.</td>
<td>It goes against the original goal of Fair Trade to empower small producers by licensing large plantation farms that are typical of conventional agriculture.</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Minimum Entry Requirements</td>
<td>Not included in standards.</td>
<td>Initially, there were negotiations within Transfair USA over a minimum purchase level to use the Fair Trade seal (Jaffee 2010, p 274).</td>
<td>Many large corporations are purchasing Fair Trade products at very minimal levels.</td>
<td>No</td>
<td>Yes</td>
</tr>
</tbody>
</table>
a. Level of Fair Trade Minimum Prices

As stated before, the Fair Trade price is determined by Fair Trade USA and published in their database. Some prices used by Fair Trade USA are determined by Fairtrade International (FLO) (Fair Trade Standards, Fair Trade USA). Given that coffee is the most prolific and prominent fair trade product, I assume that it’s pricing level (compared to the world price) is generally representative of prices for all Fair Trade commodities.

According to Fair Trade USA’s pricing database, the price as of March 2011\(^\text{11}\) for Arabica coffee is $1.40/lb., with an additional $0.20 pricing premium for standard coffee and an additional $0.30 pricing premium for certified Organic coffee (Pricing Database, Fair Trade USA). The world price of conventional coffee at this time was $2.24/lb. as recorded by the International Coffee Organization (ICO Indicator Prices). Therefore, the most recent given Fair Trade price was $0.84/lb. lower than the price for conventional coffee. In this situation, buyers of Fair Trade coffee pay the conventional price to farmers plus the Fair Trade premium which is added to the conventional price.

These fair trade prices are controversial for several reasons. While the fair trade price initially set in 1988 by Max Havelaar was “based on assessments of producers’ costs and livelihood needs”, the prices have now become based primarily on negotiations between corporations and activists (Jaffee 2010, p. 276). As a result, studies of Fair Trade prices over time have shown that “real fair trade coffee prices (adjusted for inflation) fell by 39% between 1988 and 2005” (Jaffee 2010, p. 276). In addition, the fair trade price would have to increase to $2.29/pound ($0.89 higher than it is currently) to equal the purchasing power of the original price set in 1988 (Jaffee 2010, p. 276). Thus, fair trade prices have shifted from being based on production and living costs to negotiations between industry and activists.

\(^{11}\) The most current price provided by the pricing database on Fair Trade USA’s website: http://www.fairtradeusa.org/certification/standards
and “no longer provides a living wage [for farmers]” (Jaffee 2010, p. 276). Figure 3 shows a graph of the nominal prices of conventional and Fair Trade Arabica coffee from 1989 to 2010 (Fairtrade Foundation).

**Figure 3: Arabica Coffee Fair Trade and World Prices 1989-2010**

Since Fair Trade prices have declined in real terms over time, they have only been significantly higher than conventional prices when conventional prices are very low. In a study documenting the prices received by Fair Trade cooperatives, it notes: “during 2000-2004, when the international coffee prices were low [‘the coffee crisis’; prices were extremely low compared to previous years], the Fair Trade minimum price increased prices substantially for those cooperatives that were able to sell to Fair Trade markets [because it was much higher than the world price], but during 2005-2008, the Fair Trade
minimum price has been within the volatility of market prices, and thus has had less significance for producer organizations [the FT price has been within the range of the world prices]” (Valkila 2010, p. 262). Other research confirms this idea saying: “in 2001-2004 [...] the economic benefits of Fairtrade certification were significant. However, with high prices in the coffee market producers could often get the same price in the conventional market as in the Fairtrade market” (Myhr 2011, p. 2). Thus, with the exception of 2000-2004 (the period of the coffee crisis), the Fair Trade price has been within the range of the conventional price meaning that farmers have only received significantly higher wages from Fair Trade when the world coffee price has been low (Valkila & Nygren 2010, p. 326). Since cooperatives also have to pay licensing fees to be Fair Trade certified, a fair trade price similar to the conventional price does not to “cover the costs of sustainable production” any more than conventional prices, and thus does not represent the original main goal of Fair Trade (Myhr 2011, p. 6).

As well as the price itself, the price premium has become controversial. Since the current Fair Trade price is lower than the price of conventional coffee, the added price premium does not serve as an additional bonus to the fair trade price but rather as the only difference between the conventional and fair trade price. As representatives from Just Coffee state: “The idea with the ‘premium’ is that it should be ‘extra’ cash left over after producers are paid for the value of their coffee and labor, to be invested in community infrastructure [...] in order for these ‘premiums’ to work, we have to assume that growers are making money beyond the cash they need for basic survival. We have heard from farmers that this is not always the case” (Jaffe 2010, p. 276). Therefore, the price premium cannot be invested in projects to help the community as originally intended unless the fair trade minimum price is higher than the world price.
b. Certification of Plantations

Fair Trade was originally intended to certify groups of small farmers or producers that were “small-scale and organized into democratic associations” and was “designed as a system explicitly for the benefit of small farmers” (Valkila & Nygren 2010, p. 322; Jaffee 2010, p. 277). Seen as the most marginalized and powerless within international markets, small producers were encouraged to join or form cooperatives of other small farmers to give them more collective bargaining power, to allow for democratic decision making, and to become certified as Fair Trade. However, as the Fair Trade label expanded to more products, it was unable to cover many products that were produced exclusively in plantation or other more conventional styles of production such as tea and bananas (Jaffee 2012, p. 108). Fair Trade USA CEO Paul Rice noted in 2008: “The disadvantaged majority would be locked out of the market if I were to look for only small farms for bananas and tea” (Jaffee 2010, p. 278). Thus, Fair Trade expanded its certification of products to some plantation-produced products so that the initiative could cover more products.

Fair Trade’s standards for plantations are part of their farm workers standards (rather than small producers organizations standards for cooperatives) and typically ensure that, “employers must pay national minimum wages, workers have the right to organize (but the presence of independent unions is not required), and fair trade premiums are placed in a fund to be administered by a management-labor “joint body” for projects benefitting workers” (Jaffee 2012, p. 108). However, critics have contended that national minimum wages are often very low, “the ‘independent’ worker-management organizations have an uneven track record at best, and there is no requirement of unionization” (Jaffee 2010, p. 277).

Plantation certification within Fair Trade is also controversial because it “opens the door to the most socially and environmentally problematic forms of conventional agriculture, and can give the fair trade imprimatur to corporate ‘bad actors’ with deeply problematic histories of labor rights violations”
(Jaffee 2010, p. 277). In addition, small producer cooperatives protested the inclusion of plantation certification because their market power is limited by the certification of large, plantation operations with lower costs and higher quantities of production (Jaffee 2010, p. 277).

In response to the protests of small producers, Fairtrade International (FLO), agreed to “keep four commodities free of plantation certification for the present: coffee, cocoa, honey, and cotton” (Jaffee 2010, p. 277). While the verdict by the FLO was a victory for small producers, Fair Trade USA\textsuperscript{12} rejected the decision and left FLO in 2011 so that it could certify any plantation-produced products (Jaffee 2012, p. 109). In response to this action, Francisco VanDerhoff Boersma, co-founder of Max Havelaar and the Union of Indigenous Communities of the Region of Isthmus, stated that: “Fair Trade USA is putting small producer organizations’ [...] in direct danger, initiating the certification of private plantations and allowing the certification of small unorganized producers [...] for that reason, we deeply regret that Fair Trade USA has definitively turned its back on the Fair Trade movement’s original principals” (Small Farmers Big Change).

c. Minimum Entry Requirements

While partnerships with corporate actors have increased the quantity and visibility of Fair Trade products, the minimum participation level for corporations to become a Fair Trade licensee has been controversial. In initial negotiations over a minimum participation level, activists recommended that for a company to be able to use the Fair Trade seal it should purchase at the minimum 5% of its total purchases as Fair Trade products (Jaffee 2010, p. 274). As an Equal Exchange representative notes: “this would help ensure long term commitments, and not merely token participation” (Jaffee 2010, p. 274). However, recognizing real world constraints of business, activists suggested that bigger companies would be able to use the Fair Trade level at lower percentage levels (Jaffee 2010, p. 274). Nonetheless,\textsuperscript{12} At the time, Fair Trade USA was Transfair USA and still a part of FLO.
activists argued that the 5% purchase level should be the absolute minimum for all companies and that the minimum purchase level should gradually increase over time to avoid setting the bar too low and risk hurting the standard. While activists assumed that their views were shared by Fair Trade USA\textsuperscript{13}, “what happened in practice seems to be that Transfair simply encourages companies to work toward 5%” (Jaffee 2010, p. 274).

Jaffee 2010a notes that Starbucks started purchasing Fair Trade coffee at about 1% of its total purchases and other corporations such as Procter & Gamble and Sara Lee started purchasing less than 1% of their total purchases as Fair Trade (Jaffee 2010, p. 274). Purchasing low amounts of Fair Trade products allows corporations to engage in “fair-washing” or using Fair Trade to bolster their ethical image without fully committing to the Fair Trade movement (Jaffee 2010, p. 274). Low Fair Trade purchase levels for corporations could also hurt smaller sellers of Fair Trade products who are unable to subsidize the costs of Fair Trade in the same way that corporate actors can (Jaffee 2010, p. 275).

d. Discussion

The analysis of the controversial standards within Fair Trade shows that the Fair Trade regulatory body has effectively become controlled and used as a tool by corporate actors. Activists, fighting to preserve the initial mission and scope of Fair Trade, have fought to change the same aforementioned standards within Fair Trade for several years. However, as the initiative has developed, it has become more controlled by corporate actors, shown by its departure from FLO in 2011 for the unlimited certification of plantations and the creation of additional Fair Trade labels (i.e. Fair for Life) that are more in line with activists values. Without adequate representation within the Fair Trade USA regulatory board, activists have been unable to turn their values into policy and instead see Fair Trade USA primarily serve the interests of corporate actors.

\textsuperscript{13} At this time Fair Trade USA was Transfair USA.
If Bernstein’s theory of the Life Cycle of Regulatory Commissions were to apply to Fair Trade, it would have gone through an evolutionary process from its creation to its capture by industry. Fair Trade would have formed around significant public agitation about conventional agricultural production or low commodity prices. After regulatory bodies were formed, they would be aggressive in their attempts to regulate, but would be limited by a lack of power and organizational support. Eventually, they would simply regulate disputes within industry and become a tool of industry, rather than an independent body with effective regulatory power.

The analysis of Fair Trade shows that it has not gone through an evolutionary process similar to that discussed in the theory of the Life Cycle of Regulatory Commissions. While it was formed around agitation about low commodity prices, Fair Trade USA\textsuperscript{14} was initially more effective in its ability to regulate, shown by its initial higher Fair Price in real terms, and its initial limit of the initiative to certify small producer cooperatives. Fair Trade USA\textsuperscript{15} initially was also part of FLO, meaning it had more organizational support and legitimacy than it currently has after its departure from the most recognized international fair trade system. Clearly, Fair Trade does not represent capture of a regulatory body through the process described by Bernstein.

If Meier’s theory of Regulatory Capture were to apply to Fair Trade, it would have started as a regulatory body with limited power, especially compared to interest groups of corporate actors. As a result, it would be limited in its ability to regulate and eventually would come to be influenced by corporate actors to accommodate their needs. Finally, it would be rendered unable to fight the interest groups of corporate and industry actors, and would regulate in the interest of corporations rather than in the public interest.

\textsuperscript{14} Initially, Fair Trade USA was Transfair USA.
\textsuperscript{15} Initially, Fair Trade USA was Transfair USA.
The analysis of Fair Trade shows that it has become captured by industry as Meier demonstrates. When Fair Trade first partnered with corporate actors, it clearly had little ability to influence policies of corporate actors. Fair Trade was unable to require corporate actors to purchase a set minimum level of Fair Trade coffee, shown through Starbucks initial partnership in which it purchased about 1% of its total coffee volume as Fair Trade and declared itself an ethical purchaser (Jaffee 2010, p. 274). In the following years, Fair Trade created new partnerships with corporate actors who purchased Fair Trade coffee at the same rate or lower as Starbucks.

The fair price that was the main reason for the movement’s creation shows signs of capture as it has fallen dramatically in real terms since the movement’s inception and negotiations over its level now reflect: “the prevailing balance of power between different groups of participants in the coalition” (Jaffee 2010, p. 276). As a result, the current Fair Trade price is $0.84 lower than the conventional price for coffee.

Finally, Fair Trade has shown that it now regulates in the interests of corporate actors in its decision to include plantation certification for essential commodities (i.e. coffee). Although FLO agreed to, “keep four commodities free of plantation certification for the present: coffee, cocoa, honey, and cotton”, Fair Trade USA left FLO in 2011 so that it could certify any plantation-produced product (Jaffee 2010, p. 277). As FLO was the most recognized international Fair Trade Organization, Fair Trade USA clearly showed that it had been captured in its decision to leave FLO. Additionally, activists created a new fair trade label (Fair for Life), that is now more used among small, ethically-conscious companies.

Rather than regulating in the interests of activists who started the movement, Fair Trade has shown a clear shift towards being regulated for the interests of corporate actors. Unable to effectively influence policy, activists are seeing Fair Trade stray further from the original values in which it was based towards the values of corporate and industry actors.
V. Organic: Controversial Standards and Analysis

The Organic movement started with farmers in the United States who believed that conventional agriculture was too industrialized, used too many synthetic agrochemicals and was not sustainable in its use of farmlands. These farmers wanted to work with the land in a way that would “replicate natural ecosystems” (Guthman 1998, p. 135). In this sense, early pioneers of the Organic movement all had different ways of working with the land in more sustainable, ecologically friendly ways. These different farmers all shared some common beliefs of farming including, “Composting, covercropping, the use of animal and green manures, of permaculture [...] together with avoidance of synthetic, and often botanical poisons” (DeLind 2000, p. 198).

The most prominent value of early Organic production was the “absence of chemical residues” in agricultural production (DeLind 2000, p. 198). Seen as harmful to both the environment and to human health, the use of agrochemicals also represented the typical industrial farm’s drive for cost efficiency over product quality. Organic farmers wished to forgo the use of pesticides and turn to more natural alternatives.

Early Organic proponents also valued and advocated for more ecological and ethical treatment of animals. Rather than advocating the use of Confined Animal Feeding Operations (CAFOs) common in industrial agricultural production, Organic farmers let their animals graze on open pasture and refused to use antibiotics on their animals.

Finally, early Organic farmers were against the use of genetically modified organisms (GMOs) and nanotechnology. Although it is generally unknown what effects these substances have on human health, Organic farmers that wished for more natural forms of production had no interest in the use of either substance.
However, corporations saw Organic farming as a way to access higher profits for specialty products. Since Organic production used less chemicals and industrial production techniques, its products sold for higher prices than conventional agricultural products. Corporations thus wanted to use the Organic seal to attract environmentally conscious consumers without significantly raising the costs of their production and thus, “the essential motivation for this participation remains the goal of profit rather than a commitment to the ideals that originally shaped the development of agrifood alternatives” (Jaffee & Howard 2010, p. 389).

Corporations wanted to be able to use the Organic seal on products that were produced under low-cost means similar to conventional agricultural products. This meant they wanted to be able to use chemicals and pesticides to lower their costs of production. When discussing the NOSB and the National List, Strom notes that: “As corporate membership on the board increased, so, too, has the number of nonorganic materials approved for organic foods on what is called the National List […] Today, more than 250 nonorganic substances are on the list, up from 77 in 2002” (Strom 2012, p. 3).

They also wanted to use other aspects of conventional production such as irradiation, sewage sludge and GMOs in Organic production. When irradiation, sewage sludge, and GMOs appeared in the USDA’s proposed rule for Organic against the NOSB’s recommendations, “the proposed rule […] was criticized for lowering (or altering) NOSB-derived standards to accommodate the needs of large-scale growers and processors” (DeLind 2000, p. 201). Thus, the inclusion of irradiation, sewage sludge, and GMOs to the proposed rule for organic was explicitly for the benefit of corporate actors.

Finally, corporations sought to use the Organic seal on animal products and farms that resembled conventional, large-scale farms. This meant they wanted to be able to give animals antibiotics and limited space for grazing (similar to in large CAFOs), shown by “evidence that organic
farms are increasing in scale and using more capital intensive inputs and production techniques” (Jaffee & Howard 2010, p. 391).

Figure 4 shows the USDA Organic standards that have been controversial to either activists or corporations. Column one states the controversial aspect of the standard, column two states in what standard the controversial aspect is documented, column three states the basis for the standards inclusion, column four states complaints with the standard and columns five and six state whether the controversial standard was more beneficial to activists or corporations.
### Figure 4: USDA Organic Controversial Standards

<table>
<thead>
<tr>
<th>Controversial Aspect</th>
<th>Appears in Standard</th>
<th>Basis for Inclusion</th>
<th>Complaints</th>
<th>Beneficial for Activists</th>
<th>Beneficial for Corporations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Irradiation, Sewage Sludge, GMOs</td>
<td>Removed</td>
<td>All were included because they were typical features of conventional production.</td>
<td>All these three were seen as conflicting with the ideals of organic and were not included in the original NOSB proposal sent to the USDA.</td>
<td>Initially No; After Final Ruling Yes</td>
<td>Initially Yes; After Final Ruling No</td>
</tr>
<tr>
<td>Definition of animal access to pasture</td>
<td>Access to Pasture Final Rule</td>
<td>National organic standards were designed to ensure that pasture animals received adequate access to pasture so that they could consume a minimum amount of natural grasses (Access to Pasture).</td>
<td>The previous requirements were vague and allowed large agricultural producers to deny their animals adequate access to pasture.</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Definition of allowable inputs</td>
<td>Included in “National List of Allowed and Prohibited Substances” (National Organic Program).</td>
<td>Included so that production of organic products can be facilitated with the use of additional inputs.</td>
<td>Consumers and activists saw the inclusion of synthetic and chemical inputs as contrary to the original goals of the organic movement.</td>
<td>Yes (partially)</td>
<td>Yes (partially)</td>
</tr>
<tr>
<td>Extension to other products</td>
<td>The NOSB passed a recommendation in 2009 for “Solving the Problem of Mislabeled Organic Personal Care Products” to create a standard</td>
<td>To allow producers of non-agricultural products to use the Organic seal on products produced with Organic ingredients.</td>
<td>Manufacturers were using the “organic” label on products that had not been verified as produced with only organic ingredients.</td>
<td>Yes (Partially)</td>
<td>Yes (Partially)</td>
</tr>
</tbody>
</table>
for Organic Personal Care Products (Solving the Problem of Mislabeled Organic Care Products).

| Use of Nanotechnology | Appears in “Guidance Document – Engineered Nanomaterials in Organic Production, Processing and Packaging” published by the NOSB in 2010 (Guidance Document - Engineered Nanomaterials). | Nanotechnology is used in the production of many foods to reduce fat content, add flavor, and to increase the “shelf life” of many products (Out of the Laboratory and On To Our Plates). | Research suggests that exposure to nanoparticles through production and consumption could damage our cells’ nuclei which could in turn cause “granulomas, lesions, cancer or blood clots” (Out of the Laboratory and On To Our Plates). | Yes (Partially) | Yes (Partially) |

### a. Irradiation, Sewage Sludge & GMOs

After the NOSB submitted its initial recommendation for Organic standards to the USDA, the USDA published its proposed rule for Organic in 1997 (DeLind 2000, p. 199). While the NOSB spent four years creating its recommendations, the USDA spurred many of the NOSB’s concerns by including in its proposed rule: “the acceptance of food irradiation for controlling spoilage and bacterial contamination, sewage sludge as a soil amendment, and genetically modified organisms (GMOs)” (DeLind 2000, p. 199).

These three items represented some of the more controversial aspects of conventional production and created an immediate backlash from activists.

Irradiation is used as a technique to extend the shelf-life of foods by killing bacteria and microbes (Irradiation and Food Safety). Food irradiation is conducted using: “high-energy Gamma rays, electron beams, or X-rays [to] break apart the bacteria and insects that can hide in meat, grains, and
other foods” (Food Safety Fact Sheet). Approved by the FDA in 1963, it is typically used in the production of meats and raw produce (Irradiation and Food Safety). However, food irradiation has been shown to affect the taste of foods, lower vitamin content, and create “chemicals known or suspected to cause cancer and birth defects” (Food Safety Fact Sheet).

Sewage sludge became used in agricultural production after the Ocean Dumping Ban Act of 1988 prohibited it from being dumped in the ocean as it had previously (Ocean Dumping Ban Act of 1988; Sludge News). Rather than dumping it in the ocean, farmers were encouraged to use sewage sludge as a makeshift form of compost. While sewage sludge’s use in agricultural production was justified by equivocating it to a natural fertilizer, it has been shown that sewage sludge can contain “hundreds of dangerous pathogens, toxic heavy metals, flame-retardants, endocrine disruptors, carcinogens, pharmaceutical drugs, and other hazardous chemicals” (OCA Sludge Leaflet).

Genetically modified organisms (GMOs) have been developed to increase crop yields, make crops more durable to climate and disease, reduce pesticide use, increase nutrient content, and increase agricultural production (Genetically Modified Foods and Organisms). However, GMOs have been controversial in that their effects on humans and the environment are not well established. Also, they can be toxic or allergenic, and they increase rather than decrease pesticide use (GMO Myths and Truths).

As all three of the previously mentioned additions indicate (irradiation, sewage sludge and GMOs), their inclusion in the initial draft of the National Organic Program was very controversial for organic activists. All three additions represented environmentally destructive methods of production, and shared no resemblance to the natural, sustainable production techniques that activists had originally advocated as organic. Former NOSB member Joan Gussow shared this sentiment, noting that: “organic agriculture is being defined, its definition being rendered serviceable to an existing agrifood
industry” (DeLind 2000, p. 199). In response, activists and consumer advocate groups mobilized a public campaign of more than 275,000 consumers against the addition of irradiation, sewage sludge, and GMOs to the Organic standards (Jaffee & Howard 2010, p. 390). In the face of intense public pressure, the USDA excluded irradiation, sewage sludge, and GMOs from its final draft published in 2002 (Jaffee & Howard 2010, p. 390). While clearly a win for activists who wanted the previously mentioned additions removed from Organic standards, the fight over what to include in the rule may have hurt the organic movement overall by: “focusing attention on allowable inputs, to the exclusion of other goals” (Jaffee & Howard 2010, p. 390).

b. Definition of Animal Access to Pasture

The 2002 Final Rule for Organic recommended but did not require access to pasture for grazing animals (Behind the Organic Pasture Rule at the USDA). Due to the vague language of the 2002 rule and a lack of pressure from the USDA, many animal producers were certifying their products as organic even if their animals were raised in close confinement in conventional operations similar to CAFOs, without access to pasture (Behind the Organic Pasture Rule at the USDA). The lack of pressure from the USDA to provide adequate grazing time was likely because in a conventional, confined operation dairy (very limited access to pasture), cows produce more milk as they do not expend energy walking in and out of pasture (Behind the Organic Pasture Rule at the USDA).

After more than 80,000 public comments protesting the initial access to pasture rule in the NOP, the NOSB submitted a new access to pasture rule that was published by the NOP in 2010. Specifically addressing public complaints, the new access to pasture rule required animal and dairy producers to: “provide year-round access for all animals to the outdoors, recognize pasture as a crop, establish a functioning management plan for pasture, incorporate the pasture management plan into their organic

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16 The Final Draft of 2002 was the first published rule of USDA Organic.
system plan (OSP), provide ruminants [grazing animals] with pasture throughout the grazing season for their geographical location, and ensure ruminants derive not less than an average of 30 percent of their dry matter intake (DMI) requirement from pasture grazed over the course of the grazing season” (NOP Access to Pasture, p. 1). As stated by the Agricultural Marketing Service (AMS) which oversees the NOP, the new access to pasture rule was established: “to ensure that NOP livestock regulations have sufficient specificity and clarity to enable AMS and accredited certifying agents to efficiently administer the NOP and to facilitate and improve compliance and enforcement [and] to satisfy consumer expectations that ruminant livestock animals graze on pastures during the grazing season” (NOP Access to Pasture, p. 4).

In a clear victory for organic consumers and activists, the NOP removed its vague language in defining and enforcing animal access to pasture, replacing it with a concrete rule that established clear standards for animal access to pasture. Not only beneficial to organic consumers, this rule helped small animal farmers and dairies that had been raising animals with adequate access to pasture but were being outcompeted by cheaper, organic products produced by large farms that did not allow their animals to graze.

c. Definition of Allowable Inputs

Since its creation in 2002, any synthetic or nonorganic materials allowed or restricted within Organic production had to be approved by the NOP and published in the National List of Allowed and Prohibited Substances (shortened to National List). Any organization or individual may propose a synthetic or nonorganic substance to be included to the National List, which is then reviewed and recommended to be either published or not included in the National List (National Organic Program). Every five years all of the materials on the National List are reviewed by the NOSB, which determines whether the materials should stay, be removed or have their listings amended (National Organic
The debate about what should and should not be included on the National List has been an ongoing fight between activists and industry.

In 2004, the first controversial attempted additions to the National List were several animal and livestock medications. The proposed additions included the medications: “activated charcoal, bismuth subsalicylate, butorphanol, calcium borogluconate, calcium propionate, kaolin pectate, magnesium hydroxide, magnesium oxide, mineral oil and potassium sorbate” (Concerning Livestock Recommendations). These medications, like many used by conventional livestock producers, were not technically approved by the FDA but were: “allowed under FDA’s regulatory discretion” (Concerning Livestock Recommendations). After being petitioned to include these medications on the National List, the NOSB approved the addition of these livestock medications to the National List. The NOSB approved these medications even though, as activists state: “if implemented, they would allow a host of new synthetic materials into organic production without review and [would] facilitate the recycling of dairy animals between organic and conventional operations” (OCA’s Ongoing Campaign to Safeguard Organic Standards).

While approved by the NOSB, the NOP notified the NOSB that: “livestock medications which are not formally approved by the FDA, cannot be placed on the National List” (Concerning Livestock Recommendations). Thus, in a victory for activists, these livestock medications were not added to the National List. However, the NOSB has been active in pursuing other ways of including these livestock medications in the National List without disregarding FDA regulations, foreshadowing possible future controversies.

d. Extension to Other Products

In August 2005, the USDA announced that it had “extended the USDA regulations to cover the organic claims made by personal care products which meet the composition requirements for organic
food” (Solving the Problem of Mislabeled Organic Personal Care Products). Still, at this time many personal care products were sold as “organic” rather than USDA Organic, confusing consumers and casting questions on their organic legitimacy (Solving the Problem of Mislabeled Organic Personal Care Products). Following the 2005 regulations, the USDA still was not actively enforcing the organic claims made by many personal care products and as a result: “Consumers are not assured that organic claims are consistently reviewed” (Solving the Problem of Mislabeled Organic Personal Care Products). Since the USDA Organic label was created specifically to prevent confusion caused by false, misleading organic labels, its failure to enforce the organic claims made on personal care products threatened to undermine the legitimacy of the USDA Organic label.

In response to the enforcement failure for personal care products, the NOSB issued a recommendation in 2009: “(1) assuring consumers that the federal government is policing organic claims on personal care products; (2) allowing for the development of a complete federal organic personal care program” (Solving the Problem of Mislabeled Organic Personal Care Products). This recommendation effectively pressured the NOP to make sure that any personal care product made with agriculturally produced organic ingredients was actively regulated. In a victory for activists, the NOSB prevented the proliferation of misleading “organic” personal care products and clarified its regulations and enforcement for organic personal care products.

e. Use of Nanotechnology

In 2010, General Mills petitioned the NOP to allow for the use of nanotechnology\(^1\) in the production of its organic products (OCA’s Ongoing Campaign to Safeguard Organic Standards).

\(^1\) Nanotechnology is defined by the NOSB as: “substances deliberately designed, engineered and produced by human activity to be in the nanoscale range (approx 1-300 nm) because of very specific properties or compositions (eg. shape, surface properties, or chemistry) that result only in that nanoscale. Incidental particles in the nanoscale range created during traditional food processing such as homogenization, milling, churning, and freezing, and naturally occurring particles in the nanoscale range are not intended to be included in this definition. All
Nanotechnology is used in the production of many foods to reduce fat content, add flavor, and to increase the “shelf life” of many products (Out of the Laboratory and On To Our Plates). While its effects on the human body are still not fully understood, research suggests that exposure to nanoparticles could damage human cells’ nuclei, which could cause “granulomas, lesions, cancer or blood clots” (Out of the Laboratory and On To Our Plates). In addition, laborers who work with or are exposed to nanotechnology on a regular basis face additional risks of these health problems. Also, nanotechnology could hurt the environment by altering: “the functioning of nitrogen fixing bacteria associated with plants” (Out of the Laboratory and On To Our Plates).

In response to General Mills’ petition to the NOSB for the inclusion of nanotechnology, activists pressured the NOSB to explicitly prohibit the use of nanotechnology in Organic products. In October 2010, prior to issuing its recommendation, the NOSB first acknowledged, “There is overwhelming agreement within the organic industry to prohibit nanotechnology in organic production and processing at this time” (Engineered Nanomaterials in Organic Production, Processing and Packaging). While the NOSB recommendation discussed the prohibition of nanotechnology in organic production, it also acknowledged the additional dangers of contamination from nanoparticles during food production. Still, while the 2010 NOSB recommendation argues for the prohibition of nanotechnology in all Organic products, it does not explicitly prohibit nanotechnology. It advocates the need for more clarification of what qualifies as nanotechnology and more analysis of how nanotechnology is used and affects food production. Thus, it recommends to the NOP that nanotechnology should be prohibited from Organic production.

Although the NOP did not explicitly ban nanotechnology from being used in Organic products, the 2010 NOSB recommendation is at least a partial victory for activists. The 2010 NOSB nanomaterials (without exception) containing capping reagents or other synthetic components are intended to be included in this definition” (Engineered Nanomaterials in Organic Production).
recommendation does establish recommended guidelines for the prohibition of nanotechnology and acknowledges that it needs to work with the NOP to establish further guidelines to effectively regulate production to make sure nanotechnology is not involved or does not contaminate production.

f. Discussion

After an analysis of the controversial standards within Organic, it is evident that both corporate actors and activists have both won and lost in the fight over controversial standards. After the initial inclusion of irradiation, sewage sludge and GMOs in the 2002 proposed rule for Organic, a massive activist campaign caused them to be removed from the final rule in a clear victory for activists. However, since this initial fight, battles over controversial standards have become more complex and have often ruled in favor of both parties.

Thus the analysis of the controversial standards within the Organic label shows that the Organic label has not been controlled by activists or corporations, but instead represents the values of both parties. As the NOSB is a public regulatory body, its membership has to compose of a diverse group of stakeholders. It appears that this diverse group of stakeholders is much more effective in creating standards that benefit both parties than the less diverse group that regulate Fair Trade.

Still, it is clear that many controversial aspects of the Organic program are still being debated between activists and corporations (i.e. final recommendations on nanotechnology, additions to National List). While the program may never completely resolve many of the fights between activists and corporations, it has benefitted both parties to a certain extent and shows that it represents the wishes of a diverse group of stakeholders.

If Bernstein’s theory of the Life Cycle of Regulatory Commissions were to apply to Organic, it would have gone through an evolutionary process from its creation to its capture by industry. Organic would have formed around significant public distress about conventional agricultural production or low
commodity prices. After regulatory bodies were formed, they would be aggressive in their attempts to regulate, but would be limited by a lack of power and organizational support. Eventually, they would simply regulate disputes within industry and become a tool of industry, rather than an independent body with effective regulatory power.

Clearly, the Organic program has not gone through the evolutionary process described by Bernstein and has not been captured by industry. While Organic did form about public distress about conventional agricultural production, it has had increasing organizational support since its creation. After the proposed rule included irradiation, sewage sludge and GMOs, a massive activist campaign drafted popular public support and pressured the USDA to remove the three aforementioned items from the final rule for Organic. Since then, public pressure on the NOP to maintain legitimate Organic standards has become even more intense, shown through constant campaigns by activist organizations such as the Organic Consumer’s Association (OCA’s Ongoing Campaign to Safeguard Organic Standards). Finally, the NOSB has not become simply a tool of industry to be used for its benefit, showing that Organic has not been captured as Bernstein describes.

If Meier’s theory of Regulatory Capture were to apply to Organic, it would have started as a regulatory body with limited power, especially compared to interest groups of corporate actors. As a result, it would be limited in its ability to regulate and eventually would come to be influenced by corporate actors to accommodate their needs. Finally, it would be rendered unable to fight the interest groups of corporate and industry actors, and would regulate in the interest of corporations rather than in the public interest.

Meier’s theory of Regulatory Capture thus does not apply to Organic. Although the NOSB may have initially had limited power in comparison to corporate actors, other interest groups (i.e. Consumer Unions) were able to influence policy to remove irradiation, sewage sludge and GMOs from the final rule
of Organic. Over time, the NOSB has actually become more effective in its ability to regulate industry actors, shown through the passage of the new animal access to pasture rule, the additional clarification over the certification of personal care products, the rejection of many controversial substances to the National List and recommendations against the inclusions of nanotechnology to Organic. Clearly, the NOSB has not been captured by industry, but actually more effective in its ability to regulate disputes between activists and corporate actors.

VI. Conclusion

After an analysis of controversial standards within Fair Trade and Organic, it is clear that some insight can be gained from this comparison of public and private regulatory bodies. Each regulatory body was designed to create standards that represented original values of each initiative without diluting the original goals of the movement. At the same time, each regulatory body also had to design standards reasonable enough that corporate and industry actors would want to use the label on their products.

Fair Trade USA and the NOSB worked in this way, to create legitimate standards for each initiative. However, since Fair Trade USA became regulated privately while the NOSB became regulated publicly, the different nature of each regulatory body caused them to work differently in response to pressures from corporations. The NOSB was regulated by a group of stakeholders that legally had to be derived from diverse groups of activists and corporate actors. Fair Trade USA was regulated privately and had no legal guidelines in how to construct its regulatory body.

While Jaffee & Howard 2010 argued that Organic showed more signs of capture than Fair Trade, this analysis concludes the opposite. After an analysis of controversial standards within each initiative, it is clear that public regulatory bodies such as the NOSB are much more effective in representing diverse groups of industry and activists, drafting proposals and recommendations that are more representative
of diverse stakeholders and creating legislation that is more transparent and available for comment and consideration. In contrast, the private regulatory group within Fair Trade USA represents fewer diverse stakeholders, drafts proposals that are more representative of corporate stakeholders, and creates legislation that is often not very transparent. As Fair Trade’s standards have become more tailored to the interest of corporations, the movement has become less focused on the interests of small farmers and their benefits have reduced as a result. While Fair Trade is still a positive movement for workers in the south, its ability to help out small farmers is limited by corporations who are more concerned about profit than social justice. In this way, Fair Trade USA has effectively been captured by corporate actors and is being used for their own benefit.

For Fair Trade USA to become a more legitimate regulatory body that represents both activists and industry, it should be publicly regulated within the USDA. While public regulation has problems related to aspects not mentioned in this paper\textsuperscript{18}, it could create a regulatory program for Fair Trade that legally has to represent diverse groups of stakeholders in its regulatory board. Public regulation for Fair Trade could eliminate the multiple Fair Trade labels present within the US (i.e. Fair Trade USA & Fair for Life), reducing the confusion caused by multiple labeling certifications and creating a more streamlined, understandable definition of Fair Trade. Public regulation for Fair Trade would also make any documents drafted or published during the regulatory process publicly available, creating more transparency and clear direction of what the initiative is trying to achieve. Thus public regulation would create a clearer public understanding of the Fair Trade label and would be more effective in representing the values and goals of diverse stakeholders.

While my analysis proves that Fair Trade has been captured by corporate actors, my data was limited by several factors. Because I only focused on controversial standards within each movement, I

\textsuperscript{18} One problem not mentioned earlier in the paper because of its lack of relevance is the lack of accrediting agents within the USDA (Barker 2010). This may result in the inability of the USDA to effectively regulate all aspects of Organic production (Barker 2010).
did not analyze any other facets of the initiatives. Thus, I did not intend to write a critique of either initiative, rather I only analyzed if the initiatives showed signs of capture through their initiative’s standards. In addition, since I only focused on controversial standards within each initiative, it is possible that there are other aspects of each initiative that could show more evidence of capture by corporate actors or unrealistic demands by activists. Still this analysis provides additional content and elaborates on the discussion of corporate capture of Fair Trade and Organic began by Jaffee & Howard 2010.

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